

General Terms and Conditions of Sale and Delivery of the Zuidberg companies

1. DEFINITIONS

Offer:	Every offer by Zuidberg to conclude an Agreement;
Zuidberg:	The private limited companies Zuidberg Tracks B.V. (Chamber of Commerce number 52649709), Zuidberg Frontline Systems B.V. , also trading under the name of Zuidberg Transmissions, Zuidberg Tracks, Zuidberg Components, and Zuidberg Staalservice (Chamber of Commerce number 39078483) and Zuidberg StaalService B.V. (Chamber of Commerce number 53939379), all having their registered office in Ens, being the users of the Terms and Conditions;
Services:	All (additional) services and/or work, technical or otherwise, of any nature whatsoever, performed by Zuidberg, in the broadest sense;
Agreement:	All Agreements between the Parties concerning the sale/purchase and delivery of Goods by Zuidberg to the Client and/or the provision of Services by Zuidberg to the Client;
Parties/Party:	Zuidberg and the Client jointly or each of them individually;
Goods:	All items of a tangible nature offered for sale or sold and delivered by Zuidberg;
Terms and Conditions:	These General Terms and Conditions of sale and delivery of Zuidberg;
Client:	The natural and/or legal person or persons to whom Zuidberg makes an Offer and/or with whom Zuidberg concludes an Agreement.

2 APPLICABILITY

- 2.1 These Terms and Conditions are applicable to all Offers and Agreements.
- 2.2 If the Terms and Conditions have applied to any Agreement between the Parties, they will automatically apply to any future Agreement concluded between the Parties, unless the Parties have expressly agreed otherwise in writing with respect to the relevant Agreement.
- 2.3 Any general or specific terms and conditions applied by the Client are not applicable and are expressly rejected by Zuidberg.

2.4 In case of invalidity of one or more provisions of the Terms and Conditions, the remaining provisions of the Terms and Conditions will continue to apply to the Agreement. The Parties will consult each other on replacing the relevant provision of the Terms and Conditions by a provision which is valid.

2.5 In so far as an Agreement deviates from one or more provisions of the Terms and Conditions, the provisions of the Agreement will prevail. The remaining provisions of the Terms and Conditions will in that case continue to apply to the Agreement.

3 OFFERS

- 3.1 Unless expressly stated otherwise, an Offer is without obligation and valid during the term stated in the Offer. If the Offer does not state a term for acceptance, the Offer will in any case lapse fourteen (14) days after the date stated in the Offer.
- 3.2 An Offer accepted by the Client within the term of validity may be withdrawn by Zuidberg within seven (7) days of the date of receipt of the acceptance by Zuidberg, without this resulting in any obligation on the part of Zuidberg to compensate the Client for any loss incurred by the latter as a result.
- 3.3 Zuidberg will confirm an assignment given by the Client by means of an order confirmation. If the Client does not object within three (3) days of receipt of the order confirmation, the assignment as described in the order confirmation will be deemed accepted.
- 3.4 If the Client provides Zuidberg with information, drawings and suchlike for the purpose of making an Offer, Zuidberg may assume that these are accurate and will base its Offer on these documents. The Client indemnifies Zuidberg against any third-party claims relating to the use of drawings and suchlike provided by or on behalf of the Client.
- 3.5 If an Offer is made at the request of the Client and this Offer is not accepted, Zuidberg will be entitled to charge the Client for all expenses incurred in connection with the Offer.

4 FORMATION OF AGREEMENTS

- 4.1 An Agreement will only be concluded:
 - (a) by acceptance of the Offer by the Client;
 - (b) by a written order confirmation of an assignment given by the Client, either orally or in writing, other than on the basis of an Offer;
 - (c) by the actual performance by Zuidberg of an assignment given by the Client.

- 4.2 The Agreement replaces all previous proposals and arrangements made between the Parties before they concluded the Agreement.
- 4.3 Alterations and/or additions to the Agreement will only be valid after they have been accepted by Zuidberg in writing. Zuidberg will not be obliged to accept any alterations and/or additions to an Agreement and is entitled to demand that a separate Agreement be concluded in this respect. Zuidberg is authorized to charge any expenses incurred in connection with the alterations and/or additions to the Client.
- 4.4. Undertakings by and agreements with employees or representatives of Zuidberg are only binding on Zuidberg vis-à-vis the Client in so far as these undertakings and/or agreements have been confirmed in writing by Zuidberg or have been confirmed to the Client.

5 PRICES AND PAYMENT

- 5.1 Prices stated in an Offer (including a price list provided by Zuidberg) or an Agreement are in euros and, unless explicitly stated otherwise, are exclusive of packaging, transport and delivery costs in the broadest sense and exclusive of turnover tax and/or any other government-imposed levies, of any nature whatsoever.
- 5.2 If the Client places an Order with Zuidberg without explicit agreement on a price, it will, irrespective of any Offers made or prices charged earlier, be carried out at the price applicable at the time of the performance of the Agreement.
- 5.3 Zuidberg will be entitled at all times, based on its assessment of the creditworthiness of the Client, to demand security or full or partial advance payment to ensure compliance with all payment obligations, whether due and payable or not. If and as long as the Client fails to provide security or to make a full or partial advance payment, Zuidberg will be authorized to suspend its obligation to deliver.
- 5.4 Payment must be made within thirty (30) days of the invoice date, unless agreed otherwise in writing. Payment must be made into the bank account(s) designated by Zuidberg. The moment of payment will be deemed to be the moment at which Zuidberg receives confirmation from its bank that the amount concerned has been credited to the account.
- 5.5 If payment of an invoice has not been made in full within the stipulated period of time, the Client will immediately be in default by operation of law, without any further notice of default being required, and from the due date of the invoice concerned will be liable to pay interest of 2% per month, or the statutory commercial interest if this is higher, part of a month being

counted as a full month. In addition, all extrajudicial collection costs will be payable by the Client, which costs are hereby set in advance by the Parties at a minimum of 15% of the outstanding claim, with a minimum of EUR 150, without prejudice to Zuidberg's right to claim the actual extrajudicial collection costs if this amount is higher.

- 5.6 If the Client is in default of payment of any invoice as referred to in Article 5.5, all other outstanding invoices will be immediately due and payable without any further action from Zuidberg being required.
- 5.7 Payments made by the Client will be used first to settle costs and interest due, and then to settle the outstanding invoices which have remained unpaid the longest, even if the Client states that a particular payment is to settle a different invoice.
- 5.8 The Client is not permitted to suspend its payment obligations to Zuidberg or set them off against payment obligations of Zuidberg to the Client.
- 5.9 Zuidberg is entitled to set off all claims against the Client against any amounts owed by Zuidberg (and its affiliated companies) to the Client or to natural persons or legal persons affiliated to the Client.
- 5.10 All Zuidberg's claims against the Client become due and payable immediately in the following cases:
- (a) if after the conclusion of the Agreement circumstances have come to Zuidberg's attention that give it good reason to fear that the Client will not fulfil its obligations, which is at Zuidberg's discretion;
 - (b) if on conclusion of the Agreement Zuidberg asked the Client to provide security for the fulfilment as referred to in Article 5.3 and this security is not forthcoming or is insufficient;
 - (c) in the event of the Client's liquidation or insolvency or if a moratorium is applied for or, in so far as the Client is a natural person, if the Debt Rescheduling (Natural Persons) Act is declared applicable.

6 PRICE CHANGE

- 6.1 In the event that six (6) months have passed after the date on which the Agreement was concluded and Zuidberg has not completed performance of the Agreement, an increase in one or more price determining factors may be charged to the Client, at the discretion of Zuidberg. The price increase must be paid at the

same time that the principal sum or last payment term is paid.

- 6.2 If, however, the increased price which Zuidberg wishes to charge as referred to in Article 6.1 has risen by more than ten per cent (10%) compared to the original price, the Client will be entitled to cancel the Agreement within seven (7) days of the notification of the price change, with the proviso that under no circumstances will Zuidberg be obliged in that case to compensate the Client for any loss incurred as a result.

7 DELIVERY TIME

- 7.1 The delivery time stated by Zuidberg in the framework of an Agreement is always an indication and may therefore never be considered a strict deadline, unless explicitly agreed otherwise in writing between the Parties. Under no circumstances does exceeding an agreed delivery time give entitlement to compensation.
- 7.2 The delivery time stated by Zuidberg commences as soon as agreement has been reached on all details, including technical details, all necessary information and suchlike is in possession of Zuidberg and all conditions necessary for the performance of the Agreement have been complied with.
- 7.3 When determining the delivery time Zuidberg assumes that it will be able to perform the assignment in the circumstances existing at the time of concluding the Agreement.
- 7.4 In the event of different circumstances to those known to Zuidberg at the time of concluding the Agreement, Zuidberg may extend the delivery time by the amount of time required to perform the Agreement in the changed circumstances. If, as a result of the above, work cannot be fitted in Zuidberg's schedule, it will be carried out or completed as soon as Zuidberg's schedule permits.
- 7.5 In case of a suspension of obligations by Zuidberg on account of a shortcoming by the Client, the delivery time will be extended by the duration of the suspension. If, as a result of the above, any work cannot be fitted into Zuidberg's schedule, it will be carried out or completed as soon as Zuidberg's schedule permits.
- 7.6 If an agreed delivery period, or a delivery period that has been extended based on Articles 7.4 or 7.5 of these Terms and Conditions, has been exceeded, Zuidberg will only be in default if it has received a written notice of default from the Client giving it one (1) month to deliver and still fails to comply within this period of time. In the event of termination, the Client will not be entitled to compensation unless such exceeding of this period of time is the result of intent or

gross negligence on the part of the management of Zuidberg and/or its managing employees.

8 TRANSPORT, RISK AND DELIVERY OF GOODS

- 8.1 The risk of the Goods to be delivered to the Client will pass to it ex Zuidberg's warehouse (i.e. Ex Works, as included in the most recent version of ICC Incoterms). All Goods will at all times be transported at the risk of the Client. Unless the Client requests of Zuidberg in good time that the Goods be insured during transport at the expense of the Client, the Goods will be transported uninsured by or on behalf of Zuidberg.
- 8.2 Unless the Parties have expressly agreed otherwise in writing, export and import duties, clearance charges, taxes and any other government levies relating to the transport and delivery of the Goods by Zuidberg, of whatever nature, will be charged to the Client.
- 8.3 Zuidberg has fulfilled its obligation to deliver by making the Goods available to the Client on the agreed date at its warehouse. The delivery document signed by or on behalf of the Client and/or the relevant appendices of the carrier will constitute conclusive proof of delivery by Zuidberg of the Goods stated in the delivery document and/or the relevant appendices.
- 8.4 An offer for delivery by Zuidberg of the Goods ordered by the Client will be considered equivalent to the delivery of these Goods. If the Client refuses to accept the Goods offered for delivery, Zuidberg will store the Goods concerned at a location to be decided by Zuidberg for fifteen (15) days after the date of offering. After the expiry of this period Zuidberg will no longer be obliged to keep the Goods available for the Client and will be entitled to sell the Goods to a third party or to dispose of them in any other way. The Client will, however, remain obliged to comply with the Agreement by taking possession of the Goods concerned should Zuidberg so demand at the agreed price and is also obliged to compensate Zuidberg for the loss arising from the Client's initial refusal to accept the Goods concerned, including storage and transport costs.

9 RETENTION OF TITLE AND RIGHT OF PLEDGE

- 9.1 All Goods delivered will remain the exclusive property of Zuidberg until such time as the Client has complied with all of its obligations arising from or in connection with the Agreement or Agreements, including claims relating to penalties, interest and costs. Until that time the Client undertakes to store the Goods delivered by Zuidberg separate from other goods and

- clearly marked as Zuidberg property and to take out and maintain sufficient insurance.
- 9.2 As long as the Goods delivered are subject to retention of title, the Client may not encumber or sell these Goods outside its normal business operations.
- 9.3 After Zuidberg has invoked its retention of title, it will be entitled to recover the Goods delivered. The Client must allow Zuidberg to access the premises where the Goods are stored.
- 9.4 If Zuidberg cannot invoke its retention of title because the Goods delivered have been mixed, deformed or become a constituent element of other goods, the Client will be obliged to pledge the resulting new goods to Zuidberg or mortgage them.

10 COMPLAINT PERIOD AND GUARANTEE

- 10.1 The Client is obliged to inspect the Goods and/or Services delivered by Zuidberg immediately on delivery for any visible defects. If visible defects are found, the Client must notify Zuidberg of this in writing, giving reasons, within a period of fourteen (14) days from the date of delivery, failing which the goods and/or services delivered will be deemed accepted.
- 10.2 Other defects to the Goods and/or Services delivered must be reported to Zuidberg in writing within sixty (60) days of their discovery, or after they reasonably could have been discovered, failing which the goods and/or services delivered will be deemed to have been accepted.
- 10.3 If the Parties fail to reach agreement on the question whether or not there is a defect, an independent expert will be engaged. The expert will be appointed by Zuidberg in consultation with the Client. The relevant costs will be borne by the Party that, for the most part, failed in its claim, unless agreed otherwise.
- 10.4 Complaints of any nature whatsoever relating to the performance of the Agreement by Zuidberg do not suspend the Client's payment obligation and may only be communicated to Zuidberg in writing.
- 10.5 No obligation whatsoever rests on Zuidberg concerning a complaint submitted if the Client has not fulfilled all its obligations towards Zuidberg (both financial and otherwise) in time and in full.
- 10.6 A complaint concerning the Goods and/or Services delivered by Zuidberg cannot affect Goods and/or Services delivered earlier or yet to be delivered, even if these have been or will be delivered in the performance of the same Agreement.

- 10.7 A guarantee period of eighteen (18) months applies to Goods delivered by Zuidberg. The conditions of guarantee are included in the 'General Guarantee Conditions of Zuidberg', which conditions form an integral part of these Terms and Conditions and can be consulted on the website of Zuidberg.

11 EXPIRY PERIODS

- 11.1 Legal actions and other powers of the Client, for whatever reason, with respect to Zuidberg in connection with the Goods and/or Services delivered will lapse after twelve (12) months following the date on which the Client became aware or could reasonably be aware of the existence of these rights and powers, but has not lodged a written claim with Zuidberg on this basis before the expiry of this period.
- 11.2 If within the period stated in Article 11.1 a written claim has been lodged by the Client with Zuidberg, any legal action of the Client in this respect will also lapse if no lawsuit has been brought against Zuidberg before the competent court pursuant to Article 17 of the Terms and Conditions within a term of four (4) months after receiving the relevant written claim.

12 DISSOLUTION

- 12.1 Zuidberg has the right to terminate all or part of the Agreement without being obliged to pay compensation to the Client if:
- Zuidberg has declared the Client to be in default and has given it a term of at least five (5) days in the event that:
- (a) the Client does not fulfil one of the obligations under the Agreement, or does not fulfil it promptly or properly;
- In all other cases without a notice of default on the part of Zuidberg being required, including if:
- (b) the Client is granted a moratorium or has applied for such a moratorium;
 - (c) the Client has been declared insolvent, or a winding-up petition is filed against or by the Client;
 - (d) a third party levies a prejudgment attachment or attachment in execution of the Client's assets;
 - (e) the Client is a legal person and the legal person is dissolved or, if the Client is a natural person, the Client dies or is no longer able to operate his business;
 - (f) other circumstances arise which endanger Zuidberg's recovery options, entirely at Zuidberg's discretion.

12.2 If the Agreement is dissolved on one or more of the grounds referred to above in Article 12.1, Zuidberg will be entitled to compensation from the Client for any financial loss incurred by it.

13 LIABILITY AND COMPENSATION

13.1 Zuidberg will only be liable towards the Client for loss incurred by it as a direct consequence (i.e. direct loss) of gross negligence or intent on the part of Zuidberg.

13.2 Zuidberg is under no circumstances liable for:

- (a) indirect loss, including but not limited to trading loss, consequential loss or loss due to delays incurred by the Client (including business disruption, loss of income etc.), through whatever cause. The Client is required to take out insurance if necessary to cover such loss;
- (b) loss caused by defects arising from materials delivered by the Client, actions or omissions of the Client or third parties in breach of the instructions given by Zuidberg or in contravention of the Agreement and the Terms and Conditions;
- (c) loss of any nature, incurred because or after the Client has put the goods delivered into use, processed them, delivered them to third parties or arranged for them to be used, processed or delivered to third parties;
- (d) loss caused by actions and/or omissions of third parties, including auxiliary persons engaged by Zuidberg.

13.3 If and in so far as Zuidberg should be liable for loss incurred by the Client, this liability will always be limited to 50% of the invoice amount excluding VAT with respect to the Goods and/or Services delivered and paid out by the insurer of Zuidberg under a liability insurance policy based on a loss report, increased by any excess of Zuidberg under this insurance policy. For the purposes of this article, a series of connected loss-causing events will count as one event/claim.

13.4 If at the time of the loss no payment is made to Zuidberg under any liability insurance policy for whatever reason, Zuidberg's liability will always be limited to 50% of the invoice amount excluding VAT with respect to the Goods and/or Services delivered to which Zuidberg's liability relates.

13.5 The restrictions and/or exclusions of liability included in Articles 13.1 to 13.4 also apply to personnel of Zuidberg and the auxiliary persons engaged by Zuidberg in the performance of the Agreement.

14 FORCE MAJEURE

14.1 Force majeure means a shortcoming in the performance of an Agreement which cannot be attributed to Zuidberg.

14.2 Force majeure as referred to in Article 14.1 includes in any case – therefore not exclusively – shortcomings as a result of:

- (a) failures of and/or serious disruptions to the production process at suppliers of Zuidberg, including utility companies;
- (b) failure by third parties to deliver the necessary materials;
- (c) wilful misconduct or gross negligence of auxiliary persons;
- (d) strikes;
- (e) excessive sickness absence of Zuidberg's personnel;
- (f) fire;
- (g) special weather conditions (such as floods);
- (h) government measures (both national and at European level), including import and export prohibitions and impediments;
- (i) war, mobilization, disturbances, riots, state of siege;
- (j) sabotage;
- (k) traffic congestion;
- (l) machinery breakdown;

14.3 In the case of force majeure, Zuidberg has the choice of either suspending the performance of the Agreement until the situation of force majeure has ceased to exist or, whether or not having originally chosen to suspend performance, to terminate all or part of the Agreement. In either case the Client is not entitled to any compensation. If the period in which Zuidberg is unable to comply with its obligations for reasons of force majeure is longer than thirty (30) days, the Client will also be entitled to terminate part of the Agreement (with respect to the future), with the proviso that Zuidberg, in accordance with Article 14.4, will be entitled to send an invoice for the work already performed. In case of partial termination there will be no obligation to compensate for loss, if any.

14.4 If Zuidberg has met its obligations in part at the time the force majeure occurs or can only partially comply with its obligations, it will be entitled to invoice that part separately. The Client will be required to pay this invoice as if it were a separate Agreement.

15 CONFIDENTIALITY

- 15.1 Both Parties are bound not to disclose any confidential information they have acquired from each other or from some other source in the context of their Agreement. Information is to be regarded as confidential if a Party has stated that it is confidential or if it is obvious from the nature of the information that it is confidential.
- 15.2 If Zuidberg is obliged, by virtue of a statutory provision or a judicial ruling, to disclose confidential information to third parties designated by the law or a competent court and Zuidberg is unable to claim a right of non-disclosure recognized or granted by the competent court in such a case, then Zuidberg will not be obliged to pay any damages or compensation and the Client will not be entitled to terminate the Agreement.

16 INTELLECTUAL PROPERTY RIGHTS

- 16.1 Unless agreed otherwise, Zuidberg will retain all copyrights and all industrial property rights to the offers made by it, or to the images, drawings, models, trial models, software and suchlike provided or Goods delivered by it.
- 16.2 The rights to the items referred to in Article 16.1 will remain Zuidberg's property, regardless of whether costs were charged to the Client for the manufacturing. The Client is not permitted to copy, use or show these items to third parties without Zuidberg's prior explicit permission.

17 APPLICABLE LAW AND COMPETENT COURT

- 17.1 All Agreements concluded by Zuidberg are exclusively governed by Dutch law. The Vienna Sales Convention (CISG) is explicitly not applicable.
- 17.2 Any disputes between Zuidberg and a Client which has its registered office in the European Union (based on the registered office according the articles of association) will exclusively be settled by the District Court of Zwolle, the Netherlands.
- 17.3 Any disputes between Zuidberg and a Client which has its registered office in the European Union will be settled by arbitration. Only the Netherlands Arbitration Institute (NAI) in Rotterdam is competent to hear a dispute between the Parties.